



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley
State Auditor

Mike.Foley@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
auditors.nebraska.gov

December 4, 2024

Larry Leibhart, Chairperson
Cliff Township Custer County
80701 Road 420
Anselmo, NE 68813

Dear Chairperson Leibhart:

The Nebraska Auditor of Public Accounts (APA) has reviewed the audit waiver request received from the Cliff Township Custer County (Township) for the fiscal year ending 2024. **That request has been approved.**

However, as noted in the **Comments and Recommendations** section below, the Township had multiple apparent instances of noncompliance with State statute and certain control deficiencies. While the fiscal year 2024 audit waiver request has been approved, **the Township must provide our office with a formal, detailed corrective action plan to ensure that Township funds are protected from misuse, loss, and theft. The corrective action plan must describe the Township's planned course of action to resolve the issues noted below in this letter. If the corrective action plan is not submitted timely or is deemed to be inadequate, the APA will require a financial audit or attestation to be performed at the expense of the Township.**

While performing, pursuant to Neb. Rev. Stat. § 84-304 (2024 Neb. Laws, L.B. 1143, § 3), the preliminary examination necessary to determine whether further audit work would be required or the audit waiver should be allowed, the APA noted certain internal control or compliance matters, or other operational issues, within the Township.

The following information is intended to improve internal controls or result in other operational efficiencies.

Comments and Recommendations

1. Approval of Payments Outside of Public Meeting

The APA requested minutes for the Township Board's (Board) meeting, reflecting formal approval of Township expenditures. According to the Township, the Board meets only occasionally, and Township expenditures are often approved via phone call or informal visit. The APA questions this practice, as the approval of claims is being conducted outside of a public meeting. Further, the Board does not appear to be approving the expenditures of the Township Cemetery.

A township is a political subdivision of the State of Nebraska. *Steenblock v. Elkhorn Twp. Bd.*, 245 Neb. 722, 725, 515 N.W.2d 128, 130 (1994). Consequently, the activities of its Board are subject to the provisions of the Open Meetings Act (Act), which is set out at Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2014; Cum. Supp. 2022; 2024 Neb. Laws, L.B. 43, § 21; 2024 Neb. Laws, L.B. 287, § 74; 2024 Neb. Laws, L.B. 399, § 4; 2024 Neb. Laws, L.B. 1370, § 8).

Neb. Rev. Stat. § 84-1409(1)(a) (Cum. Supp. 2022) of the Act defines a “public body” to include “governing bodies of all political subdivisions of the State of Nebraska.” Additionally, per § 84-1409(2), a “meeting” is defined as follows:

Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.[.]

(Emphasis added.) Neb. Rev. Stat. § 84-1411(1)(a) (2024 Neb. Laws, L.B. 1370, § 8) states, in relevant part, the following:

[E]ach public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

Additionally, Neb. Rev. Stat. § 84-1413 (Cum. Supp. 2022) contains, among other requirements, the following:

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

Nebraska law requires the Board to approve all claims against the Township, including the Township Cemetery. In particular, Neb. Rev. Stat. § 23-255 (Reissue 2022) states the following, in relevant part:

All claims and charges against the town, duly audited and allowed by the town board, shall be paid by order so drawn.

(Emphasis added.) Furthermore, good internal controls require procedures to ensure that all Township business is conducted at public meetings, as required by State law. Without such procedures, there is an increased risk for not only loss or misuse of public funds but also violation of the Act.

We recommend the Board implement procedures to ensure that all Township business is conducted at public meetings, as required by State law, and cemetery claims are approved by the Board.

2. Board Member Per Diem

The APA obtained the monthly statements for the Township’s bank accounts from its fiscal year 2024 audit waiver request. From those statements, the APA noted that each Township Board (Board) member received a per diem of \$5,000 during fiscal year 2024. This payment appears to have been for a per diem earned over a period of five years, which had not been paid out; however, the Township failed to provide documentation supporting the approval of this per diem amount.

Neb. Rev. Stat. § 23-260 (Reissue 2022) states the following:

The members of the town board shall be entitled to a per diem as fixed by the town board at its annual meeting.

As explained in **Comment and Recommendation Number 1** (“Approval of Payments Outside of Public Meeting”) herein, the activities of the Board are subject to the provisions of the Open Meetings Act (Act). The Board is required by Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022) of the Act, therefore, to “keep minutes of all meetings,” including “the substance of all matters discussed.”

Good internal control requires procedures to ensure that the Board’s per diem is set annually, as required by State statute, and is adequately documented in the minutes of the meeting during which the per diem was approved.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of Township funds.

We recommend the Board implement procedures to ensure the Board’s per diem is set annually, as required by State statute, and is adequately documented in the minutes of the meeting during which the per diem was approved.

3. Board Member Compensation

During review of the fiscal year 2024 audit waiver request for the Township, the APA noted that compensation, totaling \$4,626, was paid to the Township Board (Board) members. This compensation was for work related to a presidentially declared disaster. Details of those payments are provided in the table below:

Check Date	Board Member	Amount
11/26/2023	Larry Leibhart	\$ 1,542
11/26/2023	Mark Schmidt	1,542
11/26/2023	Brian Bartak	1,542
Total		\$ 4,626

Each Board member was paid a rate of \$30 per hour, plus mileage; however, the Township was unable to support that those pay rates were approved by voters at the Township’s annual meeting.

Neb. Rev. Stat. § 23-258 (Reissue 2022) includes “[t]he compensation of town officers for services rendered their respective towns” among the general expenditures authorized as “town charges.”

Additionally, Neb. Rev. Stat. § 23-224 (Reissue 2022) provides the following:

The electors present at the annual town meeting shall have power:

* * * *

(8) To direct the raising of money by taxation, subject to approval by the county board . . . (e) for the compensation of town officers at the rate allowed by law and, when no rate is fixed for such amount, as the electors may direct[.]

The electors at an annual town meeting constitute a public body subject to the provisions of the Open Meetings Act (Act), which is discussed in **Comment and Recommendation Number 1** (“Approval of Payments Outside of Public Meeting”) herein. In particular, Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2022) of the Act requires such public bodies to “keep minutes of all meetings,” including “the substance of all matters discussed.”

Good internal control requires procedures to ensure that any compensation paid to Board members is approved by the electors at the annual town meeting, as required by State statute, and adequately documented in the minutes of the meeting during which the payments were authorized.

Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of Township funds.

We recommend the Board implement procedures to ensure any compensation paid to Board members is approved by the electors at the annual town meeting, as required by State statute, and adequately documented in the minutes of the meeting during which the payments were approved.

4. Negative Bank Balances

The APA noted that the Township’s checking account had a negative balance twice during fiscal year 2024. The following table shows the periods during which the bank balance was negative and the largest negative balance for each period:

Period	Largest Negative Balance
5/7/2024 - 5/8/2024	\$ 10,699
6/3/2024 - 6/14/2024	\$ 644

During fiscal year 2024, moreover, the Township incurred \$25 in overdraft fees.

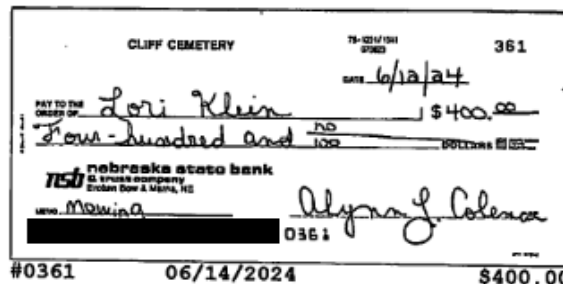
Good internal controls and sound business practices require procedures to ensure that sufficient funds are available in the Township’s bank accounts to pay claims. Without such procedures, there is an increased risk for not only loss, misuse, or theft of Township funds but also accumulation of overdraft fees.

We recommend the Township implement controls to ensure sufficient funds are available in the Township’s bank accounts to pay claims.

5. Lack of Dual Authorized Signatures

The APA obtained the monthly statements for the Township’s bank accounts from its fiscal year 2024 audit waiver request. From those statements, the APA noted that all checks written from the Township Cemetery’s bank account during the examination period contained only one signature. Further, the individual signing these checks is not a member of the Township Board (Board).

An example of such checks is shown below:



Nebraska law requires both the Clerk and the Chairperson of the Board to sign all checks approved by the Board. In particular, Neb. Rev. Stat. § 23-255 (Reissue 2022) states, in relevant part, the following:

The town clerk shall draw and sign all orders upon the town treasurer for all money to be disbursed by the township, and all warrants upon the county treasurer for money raised for town purposes, or apportioned to the town by the county or state, and present the same to the chairman of the board, to be countersigned by him, and no warrant shall be paid until so countersigned.

(Emphasis added.) In addition, good internal controls and sound accounting practices require procedures to ensure that Township checks contain the statutorily required endorsements. Without such procedures, there is an increased risk for not only failure to comply with State statute but also loss or misuse of public funds.

We recommend the Board implement procedures to require dual signatures, from both the Clerk and the Chairperson, on all Township checks, as required by law.

6. Expenditures in Excess of Budget

For the fiscal year ended June 30, 2024, actual expenditures exceeded the Township’s adopted budget by \$11,570. No amendment was filed with our office for these additional expenditures.

Neb. Rev. Stat. § 13-510 (Reissue 2022) states, in relevant part, the following:

No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

Neb. Rev. Stat. § 13-511 (Reissue 2022) sets out the procedures for amending the adopted budget accordingly.

When expenditures are made in excess of amounts budgeted, with no appropriation adjustments by the Board to address those excesses, the Township is noncompliant with State statute, further increasing the risk for loss or misuse of funds.

We recommend the Board implement procedures for: 1) monitoring closely its budget status on an ongoing basis to avoid expenditures that exceed the amount budgeted; and 2) amending the budget as required when such excess expenditures are unavoidable.

Township Overall Response: The board will hold monthly meetings going forward. There will be detailed minutes from these meetings highlighting any monetary payments to board members or for expenditures the board incurs for operating expenses (Gravel, Road maintenance work, fuel, etc.). The treasurer will let the board know what the balance is in the checking account monthly at the meetings, so all members are aware of the funds available for the payments to ensure no overdrafts occur going forward. The treasurer of the board will consult the representative of the Cliff Cemetery board that writes all the checks for the cemetery and produce a plan of action to ensure that a board member (Treasurer or Chairperson) is also a signor on the Cemetery accounts to fulfill the dual signatures on the checks issued from that account. The board will keep more detailed records to ensure that expenditures stay under the budgeted amount. If unforeseen circumstances arrive and the board sees that they will need to adjust the amount that they will be spending in the fiscal year, they will notify Dana F Cole to have them amend the budget to account for the extra expenditures if needed.

APA Response: We appreciate the Township’s timely response and efforts to enact changes. We would like to clarify that State statute requires all checks, including Cemetery checks, to be signed by two Township Board members. The Township Board is responsible for approving and issuing payments from the Cemetery bank accounts.

* * * * *

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the Township’s policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful to the Township.

This communication is intended solely for the information and use of the Township and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions, please contact **Dakota Christensen** at **402-499-8702** or **dakota.christensen@nebraska.gov**.

Sincerely,

A handwritten signature in black ink that reads "Mark Avery". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Mark Avery, CPA
Assistant Deputy Auditor